IN THE HIGH COURT OF JUDICATURE AT PATNA
CWJC No.2217 of 2006
GUNESHWAR PRASAD SINHA @ GUNES
W i t h
CWJC No.8073 of 2005
RAMESH JHA
W i t h
CWJC No.2543 of 2004
RAJENDRA PRASAD YADAV & ORS
W i t h
CWJC No.4301 of 2004
VISHWANATH LAL KARN
W i t h
CWJC No.4246 of 2004
BAIDYANATH JHA & ORS
W i t h
CWJC No.4303 of 2004
CHANDRA GUPTA SINGH
Versus
THE STATE OF BIHAR & ORS
For the Petitioners : Mr. Tej Bahadur Singh, Sr. Adv.
Mr. Kalika Nand Jha, Adv.
For the Respondents : Mr. Anil Kumar Jha, G.A.-2.

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5/ 5/8/2008. Heard learned counsel for the petitioners and learned counsel for the State.

The question involved for consideration being common in this batch of writ application, they are being disposed by this common order with consent of counsels for the parties.

The petitioners were appointed as peons in the year 1979 in ad hoc capacity when they came to be confirmed as such in 1993. This appointment was in the Secretariat of the Department of Irrigation when their services at the time of regularization were handed over to the concerned Chief Engineer in the Muffasil who was then deemed to be their appointing authority. The petitioners were then promoted as tracers in ad hoc capacity in August, 1986

by the Chief Engineer in the Muffasil. This ad hoc appointment came to be confirmed on 8.8.1989 on approval by the Additional Commissioner-cum-Special Secretary in the Secretariat of the Irrigation Department at Patna. The petitioners were later sought to be reverted from their post of tracer to the post of peon when one of them (Guneshwar Prasad Sinha) came to this Court in C.W.J.C. No.9029/03. By order dated 16.9.2003 this Court set aside the order of reversion on the grounds of violation of principles of natural justice when the issue of direct promotion and appointment to the post of tracer allegedly bye-passing service rules, that a blue printer alone can be promoted as a Tracer, raised at the behest of State, was left open for consideration. In pursuance of a fresh show cause notice the impugned order dated 31.12.2005 and the consequential order dated 16.1.2006 of reversion have been passed.

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Learned counsel for the petitioners urged that the petitioners after appointment were transferred from the Secretariat to the Mufassil when the Chief Engineer at the Mufassil was made his appointing authority and was therefore competent to promote. In any event, the approval of the Secretariat to their promotion on the post of tracer had also been accorded. He next refers to the recommendations of the 3rd Pay Revision Committee accepted by the State Government where it has been provided that 'as far as possible' the post of tracers should be filled up by promotion from blue printers meaning thereby there was no absolute bar on promotion of others. That by the date of the impugned order the

petitioners have acquired the experience of a tracer of over 19 years and were now therefore better qualified than a novice tracer to be appointed from a blue printer.

Counsel for the State urged that the petitioners being appointees of the Secretariat, their appointment as tracers at the Muffasil level was void *ab initio* and, therefore, there was no illegality in the order of reversion. The very initial appointment as a tracer being illegal mere passage of time shall not confer legality upon the same.

The petitioners did not possess the qualifications of a blue printer and were therefore ineligible to be appointed as tracers.

It has been noticed above that the petitioners were appointed at the Secretariat level when their services were transferred to the Muffasil and the competent authority in the Muffasil was their appointing authority with consequential powers over them. Subsequently, though the petitioners were appointed as tracers on ad hoc basis at the Muffasil level, even if the objection of the State be accepted that such appointments would not be made at the Muffasil, there is, in fact, post facto approval by the Additional Commissioner-cum-Special Secretary from the secretariat of such appointment.

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In that view of the matter, whether the petitioners belong to the Secretariat cadre or the Muffasil cadre, loses its relevance. Additionally, counsel for the State fairly conceded that the aspect of post facto approval granted by the Additional Commissioner-cum-

Special Secretary at the Secretariat level to the appointment of the petitioners as tracers finds no reference or discussion in the impugned order dated 31.12.2005. For that reason this Court holds that ground-1 of the impugned order automatically collapses.

Insofar as the ground-2 is concerned, it proceeds on the assumption that qualification of a blue printer was a mandatory requirement for appointment on the post of tracer. From the 3rd Pay Revision Committee recommendations, accepted by the State Government at Annexure-C, Schedule-3 to the counter affidavit, that does not appear to be the correct position.

Learned counsel for the petitioners has rightly urged that what the State Government specified was that as far as possible keeping in mind the skill of the persons appointment should be made on the post of tracers from blue printers. Be that as it may, it is the respondents who have themselves allowed the petitioners to continue on the post of tracers by now for approximately 19 years. At this stage, the issue that the petitioners were appointed on a technical post from a non-technical post loses much of its relevance. The experience of a tracer that the petitioners have acquired practically on work makes them better qualified than a novice blue printer to be appointed as a tracer. On facts this Court has already held that the ground urged in the impugned order that it was a mandatory requirement to hold the qualification of a blue printer for appointment to the post of tracer is also not sustainable in law.

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In view of the aforesaid discussion, this Court finds it difficult to sustain the impugned order dated 31.12.2005. The consequential order dated 16.1.2006 is accordingly set aside.

The writ applications stand **allowed**. The petitioners shall be entitled to consequential benefits.

KC **(Navin Sinha,J)**

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